

NEW MEXICO NATURAL HISTORY INSTITUTE

IBLA 81-1065

Decided December 29, 1983

Appeals from decisions of the New Mexico State Office, Bureau of Land Management, denying protest of the elimination of two units from further consideration as wilderness study areas. NM-020-053 and NM-030-025.

Affirmed in part; reversed and remanded in part.

1. Federal Land Policy and Management Act of 1976: Wilderness --
Wilderness Act

BLM may properly eliminate an area of less than 5,000 acres from further consideration as a WSA under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976).

2. Federal Land Policy and Management Act of 1976: Wilderness --
Wilderness Act

Nothing in Change 3 of the WIH prohibits consideration of the effect of scenic vistas on enhancing opportunities for solitude within an inventory unit, and where such vistas are "so extremely imposing" they cannot be ignored, a decision of BLM declining to designate the unit as a WSA arrived solely on the basis of ignoring these scenic vistas will be reversed.

APPEARANCES: Harry M. Zeller, Secretary, New Mexico Natural History Institute, for appellant; Dale D. Goble, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

The New Mexico Natural History Institute has appealed from two decisions of the New Mexico State Office, Bureau of Land Management (BLM), dated January 12, 1981, and February 2, 1981, denying a protest of the elimination of two inventory units, the Antelope unit (NM-020-053) and the Redrock unit (NM-030-025), from further consideration as wilderness study areas (WSA's). Appellant's protest had been directed at the final intensive inventory decision of the BLM State Office, which designated WSA's. See 45 FR 75590 (Nov. 14, 1980). The protest, dated December 11, 1980, included three units,

Antelope, Redrock, and Mescalero Sands (NM-060-501). Appellant has only appealed as to the Antelope and Redrock units.

The November 1980 BLM State Office decision was made pursuant to section 603(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782(a) (1976). That section directs the Secretary to review those roadless areas of 5,000 acres or more and roadless islands of the public lands which were identified during the inventory required by section 201(a) of FLPMA, 43 U.S.C. § 1711(a) (1976), as having wilderness characteristics described in the Wilderness Act of September 3, 1964, 16 U.S.C. § 1131 (1976). From time to time thereafter, the Secretary shall report to the President his recommendation as to the suitability or unsuitability of each such area or island for preservation as wilderness. Congress will make the final decision with respect to designating wilderness areas, after a recommendation by the President. 43 U.S.C. § 1782(b) (1976).

The wilderness review undertaken by the BLM State Office pursuant to section 603(a) of FLPMA, supra, has been divided into three phases by BLM: Inventory, study, and reporting. The November 1980 BLM State Office decision marks the end of the inventory phase of the review process and the beginning of the study phase.

The key wilderness characteristics assessed during the inventory phase of the review process are size, naturalness, and an outstanding opportunity for either solitude or a primitive and unconfined type of recreation (Wilderness Inventory Handbook (WIH), dated Sept. 27, 1978, at 6).

Redrock (NM-030-025)

This unit, totaling 14,460 acres, was eliminated from further consideration as a WSA. In so doing, BLM deleted a 4,000-acre area in the northern portion of the unit, known as the Gila Middle Box. This area is divided from the remainder of the unit by private land. BLM deleted this area because it "does not meet the size criterion" (WSA Decision Rationale).

In its protest, appellant contended that the unit satisfies the size criterion set forth in section 2(c) of the Wilderness Act, 16 U.S.C. § 1131(c) (1976), i.e., "has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition." Appellant argued that while the Gila Middle Box area is less than 5,000 acres, it satisfies the exception to the 5,000-acre rule. Appellant noted that the inaccessibility of the terrain is such that it is "relatively simple" to preserve and use the area in an unimpaired condition (Protest at 4). In responding to appellant's protest, BLM stated that the area did not meet the size criterion for areas of less than 5,000 acres, i.e., "[s]ubject to strong public support * * * and * * * clearly and obviously of sufficient size as to make practicable its preservation and use in an unimpaired condition and of a size suitable for wilderness management," identified in the WIH, at page 12. BLM based this conclusion on the lack of "strong public support" (Decision, dated January 12, 1981).

On appeal, appellant contends that BLM gave no consideration to the size criterion as defined in section 2(c) of the Wilderness Act, supra, and that,

in any case, due to the fact that the Gila Middle Box area was not properly identified in the initial inventory and was given short shrift in the intensive inventory, this explains the lack of strong public support.

[1] The WIH, at page 12, identifies three situations in which an area of less than 5,000 acres could satisfy the wilderness characteristic of size. These exceptions are based on the single exception contained in section 2(c) of the Wilderness Act, supra. However, in Tri-County Cattlemen's Association, 60 IBLA 305, 314 (1981), we concluded that in order to qualify as a WSA under section 603(a) of FLPMA, supra, a roadless area must contain at least 5,000 acres of public land. That section mandates review of "roadless areas of five thousand acres or more and roadless islands of the public lands." 43 U.S.C. § 1782(a) (1976). However, we concluded that with respect to an area of less than 5,000 acres BLM is "not precluded from managing such an area in a manner consistent with wilderness objectives, nor is it prohibited from recommending such an area as wilderness." Tri-County Cattlemen's Association, supra at 314.

Appellant also argued on appeal that the Gila Middle Box area should be considered a roadless island. It is true that a roadless island is not limited in size by section 603(a) of FLPMA, supra. However, the Gila Middle Box area cannot be considered a roadless island, which is defined in the WIH, at page 15, as "a body of land above the ordinary high-water elevation of any measurable body of water."

Accordingly, we conclude that BLM properly denied appellant's protest as to the Gila Middle Box area of the Redrock unit. The BLM decision is hereby affirmed.

Antelope (NM-020-053)

This unit, totaling 20,800 acres, was eliminated from further consideration as a WSA because it lacks outstanding opportunities for solitude or a primitive and unconfined type of recreation.

In its final intensive inventory decision, BLM described the unit as a "rolling desert prairie environment" with elevations ranging from 4,767 to 5,065 feet. A portion of the unit, totaling 20,710 acres, was originally proposed as a WSA by BLM. In its March 1980 Intensive Wilderness Inventory Report at page 5, BLM described opportunities for solitude as follows:

The Antelope Unit is isolated and rarely visited by anyone. Further, despite its lack of topographic relief, it is sufficiently large and rolling to screen human visitors one from another. In fact, the area provides the experience of extreme isolation in a big, expansive desertland environment. The Antelope Unit possesses outstanding opportunities for solitude.

However, in its final intensive inventory decision, BLM concluded that the unit lacks outstanding opportunities for solitude "[d]ue to the conspicuous lack of topographic and vegetative screening and the irregular unit boundary." BLM further stated that:

Unit elevation varies less than three hundred feet over a distance of thirteen miles. In addition, Antelope is elongated in shape, which provides for an area which in one place is only one-fourth mile wide. * * *

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* * * Although Antelope provides the experience of extreme isolation in a big, expansive desertland environment, only a small part of the environment being experienced is actually in the Antelope Unit. Furthermore, even if the adjoining Little San Pascual Wilderness is included, the experience of solitude is still strongly dependent on adjoining non-unit lands.

In its protest, appellant argued that the unit is an "extension" of the Little San Pascual Wilderness in terms of all characteristics and should, likewise, be designated a wilderness area (Protest at 1). Appellant further stated that one of the attributes of the unit is its view of adjoining land, and that this should be considered in assessing opportunities for solitude.

In responding to appellant's protest, BLM stated that:

You base your protest argument in this instance primarily on the fact this Intensive Wilderness Inventory Unit is adjacent to the existing Little San Pascual Wilderness. Needless to say, this is an important fact and was considered by Socorro District personnel in making their WSA recommendations. Proof of this consideration was the preliminary recommendation to designate this unit a WSA. However, despite this recommendation and proper notification, the Bureau of Sport Fisheries and Wildlife expressed no interest in the BLM studying Antelope for possible addition to the Little San Pascual Wilderness. Consequently, the Antelope Unit was considered separately as an inventory unit and, therefore, had to meet the outstanding opportunities for solitude/recreation criteria on its own merits. 1/

Furthermore, although public comments were quantitatively in favor of designating Antelope a Wilderness Study Area, in terms of comment quality, the adverse comments prevailed. Specifically, adverse public comment pointed out, we believe correctly, that although it is true Antelope provides a visitor with "the experience of extreme isolation in a big, expansive environment," in fact only a small fraction of the environment being experienced is within the Antelope Unit.

As you know, outside sights and sounds cannot be considered in wilderness inventory. Socorro District personnel, therefore,

1/ Regardless of the Bureau of Sport Fisheries and Wildlife's (now the Fish and Wildlife Service) "interest" in the Antelope unit, a unit must be considered during the inventory phase of the review process in terms of its own wilderness attributes. During the study phase, BLM may consider questions of management.

correctly ignored subsonic and supersonic flight sounds by military aircraft on the nearby White Sands Missile Range (and even at times over the inventory unit). Conversely, however, the District, upon reevaluation, felt it could not ignore the fact Antelope was without question dependent upon the outside sights and sounds of the surrounding landscape for any outstanding solitude/recreation opportunities it may possess.

On appeal, appellant contends that the unit satisfies the criteria for further study as a WSA "regardless of whether it is considered in conjunction with the Little San Pascual Wilderness, or purely 'on its own merits'" (Statement of Reasons, dated March 23, 1981, at 4). Appellant again emphasizes the contiguity and similarity of the Little San Pascual Wilderness and states that by virtue of its size alone the unit offers outstanding opportunities for solitude.

[2] It is apparent that the change in BLM's conclusion regarding opportunities for solitude between its proposed and final WSA decision was based on the realization that such opportunities were dependent on adjacent land. OAD 78-61, Change 3, at page 4, specifically provides that outside sights and sounds from imprints of man may be considered "where the imprint is adjacent to the unit and its impact is so extremely imposing that it cannot be ignored." See Mitchell Energy Corp., 68 IBLA 219 (1982). The OAD, by its terms, refers to imprints of man. Scenic vistas are not such an imprint. However, in Utah Wilderness Association, 72 IBLA 125, 139 (1983), we stated:

Appellants also assert that BLM improperly assessed the outstanding opportunities criterion because it failed to consider vistas. In support of their position, appellants cite a January 30, 1981, letter from the Acting Chief, Division of Wilderness and Environmental Areas, BLM, to a member of the Public Lands Institute which states that "scenic vistas" are to be treated much like outside "sights and sounds" (SOR [Statement of Reasons] at 1167). He states that "[i]n such cases, the presence of a vista may be considered in determining whether outstanding opportunities exist either for solitude or for a primitive and unconfined type of recreation."

We concluded in Utah Wilderness that the failure in that case to consider vistas was not error because "there is no evidence that the substance of this letter was communicated to BLM personnel as any type of policy directive." Id. at 146. Inasmuch as the Board ruled that the Carcass Canyon unit under consideration in that case should be reinventoried because of improper emphasis on lack of screening, the Board held that in its reevaluation BLM could consider the favorable impact of scenic vistas. Moreover, OAD 78-61, Change 3, does not preclude the consideration of scenic vistas. The OAD is directed at "imprints of man which occur outside of a unit" and a scenic vista cannot be considered an imprint of man. It is an amalgam of natural components. We agree with the implicit conclusion in Utah Wilderness, that scenic vistas are properly considered by BLM where they have a substantive impact on opportunities for solitude available in a unit. Accordingly, we hold that BLM acted improperly in deciding not to consider scenic vistas attributable to the contiguity of the Little San Pascual Wilderness.

Finally, we note that size alone is not determinative of whether an area possesses outstanding opportunities for solitude. OAD 78-61, Change 3, at page 4, states that "[c]onsideration must be given to the interrelationship between size, screening, configuration, and other factors that influence solitude." The record establishes that BLM considered the relevant factors, and found initially that the unit does provide the experience of extreme isolation and possesses outstanding opportunities for solitude. However, the record further indicates that BLM would conclude finally that the unit does not possess outstanding opportunities for solitude based on the positive values attributable in part to adjacent land, and has erroneously concluded that it cannot consider such values. 2/ Accordingly, we reverse the BLM decision denying appellant's protest and remand the case to BLM for designation of the Antelope unit as a WSA.

Pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed in part and reversed in part and the case is remanded to BLM for further action consistent herewith.

Gail M. Frazier
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

James L. Burski
Administrative Judge

2/ In effect, BLM originally concluded that the scenic vistas attributable to the contiguity of the Little San Pascual Wilderness were so extremely imposing that they could not be ignored, under the analysis set forth for outside sights and sounds in OAD 78-61, Change 3 at 4.

